

BRB No. 04-0130 BLA

ISABELL TAYLOR (Widow of	)	
JOHN L. TAYLOR)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 12/28/2004
	)	
RAG AMERICAN COAL COMPANY	)	
	)	
and	)	
	)	
EMPLOYER'S SERVICE COMPANY	)	
	)	
Employer/Carrier-	)	
Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand – Awarding Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson, Anne Megan Davis, Phillip H. Snelling (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

Tab R. Turano (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand (1999-BLA-1299) of Administrative Law Judge Rudolf L. Jansen awarding benefits in a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of

1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).<sup>1</sup> This case has been before the Board previously. The full procedural history is set forth in *Taylor v. Rag American Coal Co.*, BRB No. 02-0200 BLA (Oct. 31, 2002)(unpub.).

In *Taylor*, the Board affirmed the administrative law judge's finding that the evidence established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), but vacated his finding that the miner's death was due to pneumoconiosis. The administrative law judge credited the opinions of Drs. Abraham, Jones, Green and Cohen, that the miner's death was due to pneumoconiosis, over the contrary opinions of Drs. Caffrey, Fino, Hutchins, Naeye, Repsher and Tuteur. The Board, however, held that the administrative law judge failed to reconcile the conflicting explanations of Drs. Jones and Cohen regarding why the miner's death was due to pneumoconiosis. Specifically, Dr. Jones concluded that the miner's death was due to "clinical" pneumoconiosis, while Dr. Cohen attributed the miner's death to lung conditions that could fall within the definition of "legal" pneumoconiosis as set forth at 20 C.F.R. §718.201 if they arose out of coal mine employment. Consequently, the Board instructed the administrative law judge to reevaluate the evidence on remand and determine whether the miner, in addition to clinical pneumoconiosis, also suffered from "legal" pneumoconiosis. The Board further instructed the administrative law judge to analyze fully the documentation and reasoning of each medical opinion, and to provide valid reasons for the weight he accorded each opinion. Finally, the Board instructed the administrative law judge to reconsider the medical opinion evidence regarding whether the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

On remand, the administrative law judge found that the evidence established that the miner suffered from legal pneumoconiosis as defined at 20 C.F.R. §718.201 and that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that the miner had legal pneumoconiosis and that the miner's death was due to pneumoconiosis. Claimant responds to employer's appeal and urges affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has

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<sup>1</sup> The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002).

declined to participate in this appeal. Employer has filed a reply brief, reiterating its contentions.<sup>2</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer challenges the administrative law judge's findings that the weight of the better reasoned medical opinion evidence established that the miner had legal pneumoconiosis and that legal pneumoconiosis hastened his death. The record reflects that Drs. Abraham, Jones, Green, Cohen, Caffrey, Fino, Hutchins, Naeye, Repsher and Tuteur all diagnosed simple clinical pneumoconiosis. Moreover, all of these physicians diagnosed the miner with chronic obstructive pulmonary disease (COPD). These physicians, disagreed, however, as to the etiology of the miner's COPD.

On remand, the administrative law judge undertook an analysis of the medical opinions and concluded that:

In sum, the record contains conflicting evidence on the issue of whether [the miner] suffered from legal pneumoconiosis. The opinions of Drs. Abraham, Ali, Calhoun, Combs and Kleinerman were not probative of this issue. Drs. Fino, Howard, Hutchins, Naeye, Repsher and Tuteur opined that [the miner] did not suffer from legal pneumoconiosis; however, for the reasons discussed above, I have assign[ed] their opinions less weight. Dr. Caffrey's opinion was equivocal regarding the etiology of [the miner's] COPD and is entitled to less weight on this issue. Dr. Green opined that [the miner's] COPD was due to coal dust exposure; however, I found his opinion to be not as well documented as others in the record. Dr. Cohen issued a well reasoned and documented opinion regarding legal pneumoconiosis. I find Dr. Cohen's opinion, bolstered by that of Dr. Green, to outweigh the other opinions of record. Dr. Cohen issued a reasoned opinion and his superior credentials entitle his opinion to great weight. Therefore, I conclude that Claimant has established that [the miner] suffered from legal pneumoconiosis.

Decision and Order on Remand at 10.

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<sup>2</sup> On June 8, 2004, employer filed Employer's Motion to File Combined Reply Brief Instantly and Employer's Combined Reply Brief. We hereby grant employer's motion and accept employer's reply brief as part of the record.

Employer argues that the administrative law judge erred in discrediting the opinions of Drs. Repsher and Naeye that the miner's emphysema was due solely to smoking. In evaluating the relevant medical opinions regarding the existence of legal pneumoconiosis, the administrative law judge noted accurately that Drs. Naeye and Repsher indicated that the miner suffered from centrilobular emphysema, and stated that this was not the type of emphysema seen in coal miners. Decision and Order on Remand at 9; Director's Exhibit 18; Employer's Exhibit 6. The administrative law judge found that, "[t]hese statements conflict with the studies accepted by the Department of Labor that have found that coal dust exposure can lead to the development of centrilobular emphysema in U.S. miners. 65 Fed. Reg. 79941-79942 (Dec. 20, 2000)." Decision and Order at 9.

The administrative law judge thus found that the opinions were not well reasoned, and accorded them "less weight." *Id.* Employer asserts that both physicians merely explained that coal dust exposure "typically" does not cause centrilobular emphysema, while supporting their conclusions with reference to scientific studies. Employer's Brief at 15-16. Contrary to employer's suggestion, the administrative law judge did not find that the opinions of Drs. Naeye and Repsher were "hostile to the regulations." Employer's Brief at 4, 15. Both physicians stated that coal mine dust exposure does not cause clinically significant centrilobular emphysema. The administrative law judge, as the trier-of-fact, reasonably concluded that the physicians' opinions were not based on sound reasoning, as their statements conflicted with scientific studies accepted by the Department of Labor, and rationally gave their opinions less weight. *See Pancake v. Amax Coal Co.*, 858 F.2d 1250 (7th Cir. 1988); *see also Wetherill v. Director, OWCP*, 812 F.2d 376, 9 BLR 2-239 (7th Cir. 1987).

Employer also asserts that the administrative law judge erred in according less weight to the opinions of Drs. Fino and Tuteur that the miner's COPD was due solely to smoking. Employer alleges that the administrative law judge erroneously concluded that these physicians failed to explain how they differentiated between the effects of coal mine dust and smoking on the miner's emphysema. The administrative law judge noted that each physician stated that it was possible to differentiate between obstructive defects caused by smoking and coal dust exposure, but found that neither physician explained the process of differentiation. Decision and Order on Remand at 7-10; Employer's Exhibits 4, 12, 15. Contrary to employer's contention, substantial evidence supports the administrative law judge's findings. A review of record reflects that, other than generally referencing scientific studies, neither physician specified the manner in which they differentiated the etiology of the miner's condition. Employer's Exhibits 4; 12 at 29-41; 15. In addition, contrary to employer's assertion that there was no inconsistency between Dr. Fino's statement in his report that the miner had severe COPD and his statement at his deposition that the miner's physical examinations did not disclose a primary lung disease, it was rational for the administrative law judge to conclude that Dr. Fino's differing diagnoses were inconsistent with respect to resolving the specific issue of the

existence of legal pneumoconiosis in spite of Dr. Fino's opinion that the miner's COPD was unrelated to coal dust exposure. Decision and Order on Remand at 7-8; Employer's Exhibits 12, 15 at 9. The administrative law judge, therefore, reasonably found that, in light of these shortcomings in reasoning and analysis, the opinions were entitled to less weight on the issue of legal pneumoconiosis. *See Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 22 BLR 2-265 (7th Cir. 2001).

Employer also contends that the administrative law judge erred in crediting the opinion of Dr. Cohen. Dr. Cohen attributed the miner's COPD and emphysema to both his coal mine employment and smoking. Claimant's Exhibit 1. In discussing Dr. Cohen's opinion, the administrative law judge stated that:

Dr. Robert A. C. Cohen opined that, in addition to clinical pneumoconiosis, [the miner] suffered from chronic obstructive pulmonary disease (COPD), which was caused, in part, by coal dust exposure. (CX 1). In making his diagnosis, Dr. Cohen referred, in part, to pulmonary function studies performed while [the miner] was alive. As discussed above, I find Dr. Cohen's analysis of the pulmonary function studies to be reasonable and do not weaken his opinion. Furthermore, the pulmonary function studies were only one factor among eight leading to his conclusion that coal mine dust exposure was partly the cause of [the miner's] COPD. Dr. Cohen supports his conclusions with published studies, which have been accepted by the Department of Labor. 65 Fed. Reg. 79938-41 (Dec. 20, 2000). I find Dr. Cohen's opinion to be well documented and reasoned and assign his opinion full weight. . . . Dr. Cohen's well-documented and reasoned opinion combined with his superior credentials entitles his opinion to increased weight.

Decision and Order on Remand at 7.

Employer contends that it was error for the administrative law judge to find Dr. Cohen's opinion well reasoned in light of the physician's reliance, in part, on invalidated pulmonary function studies in reaching his conclusion. Employer's Brief at 19. In our prior decision, we instructed the administrative law judge to make specific findings regarding the validity of the pulmonary function study evidence of record and to reconsider Dr. Cohen's opinion in light of his conclusions. On remand, the administrative law judge addressed the validity of the pulmonary function studies as instructed, Decision and Order on Remand at 4-6, and concluded that four of the five studies were invalid. With respect to the June 23, 1994, pulmonary function study, the administrative law judge found that the study was invalid for purposes of determining the miner's maximum lung function. However, in light of the comments by Dr. Cohen that the study showed evidence of a restrictive defect, but that this would need to be confirmed by lung volume measurements, the administrative law judge was persuaded

that the study was interpretable to a limited extent by Dr. Cohen, who recognized the limitations of the study, and found that the physician's opinion drawing from the study was creditable. Decision and Order on Remand at 5-6. As such, the administrative law judge did not rely on the study to draw his own conclusion regarding the miner's impairment, but instead deferred to the physician's interpretation of the study.

In light of the administrative law judge's acknowledgement of the limited value of the pulmonary function study, and his consideration of the additional factors listed in Dr. Cohen's report and relied on by the doctor in reaching his conclusion, we hold that the administrative law judge permissibly found Dr. Cohen's opinion to be well reasoned. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-148, 1-155 (1989)(*en banc*). Additionally, the administrative law judge rationally gave increased weight to Dr. Cohen's views in light of his experience and credentials. *See Summers*, 272 F.3d at 483, 22 BLR at 2-280-81. We therefore affirm the administrative law judge's finding that the existence of legal pneumoconiosis was established pursuant to 20 C.F.R. §§718.201(a)(2); 718.202(a)(4).

Employer next challenges the administrative law judge's finding that pneumoconiosis hastened the miner's death pursuant to Section 718.205(c). The administrative law judge found that the opinions of Drs. Cohen and Jones, bolstered by the lesser weighted opinions of Drs. Abraham and Green, established that the miner's death was due to pneumoconiosis. Decision and Order 10-14. Employer asserts that both Dr. Cohen and Jones rendered conclusory opinions and that the administrative law judge failed to provide a rationale for finding the opinions persuasive. We disagree.

As the administrative law judge found, Dr. Cohen explained that COPD due partly to coal dust hastened the miner's death by leaving him with insufficient lung function to withstand pneumonia and pulmonary embolisms. Claimant's Exhibit 1 at 18. Employer alleges that the administrative law judge's decision to rely in part on Dr. Jones' opinion that pneumoconiosis hastened the miner's death by reducing his ability to oxygenate his blood cannot be reconciled with the administrative law judge's determination "that the doctor's diagnosis of 'legal' pneumoconiosis was unreasoned and undocumented." Employer's Brief at 31. The administrative law judge stated that while "Dr. Jones diagnosed [the miner] with coal workers' pneumoconiosis and COPD," it was "unclear from the opinion whether Dr. Jones determined the etiology of [the miner's] COPD." Decision and Order on Remand at 8-9. Thus, the administrative law judge found "Dr. Jones' opinion to be vague regarding the issue of legal pneumoconiosis" and "entitled to less weight." *Id.* Contrary to employer's allegation, however, the administrative law judge could still rely on Dr. Jones' opinion that clinical pneumoconiosis hastened the miner's death. The record indicates that both Drs. Cohen and Jones indicated that the miner's diminished pulmonary function was due at least in part to coal mine employment and that this condition was a contributing factor in the miner's death, and they explained their conclusions in sufficient detail for the administrative law judge to rationally find that pneumoconiosis was a substantially contributing cause of death pursuant to 20

C.F.R. §718.205(c)(2). *See Peabody Coal Co. v. Director, OWCP [Railey]*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992); *Peabody Coal Co. v. Shonk*, 906 F.2d 264 (7th Cir. 1990); *see also Migliorini v. Director, OWCP*, 898 F.2d 1292, 13 BLR 2-418 (7th Cir. 1990).

The administrative law judge is empowered to weigh the medical opinion evidence of record and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark*, 12 BLR at 1-155; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Consequently, we affirm the administrative law judge's finding that the miner's death was due to pneumoconiosis as it is supported by substantial evidence. Employer's remaining challenges amount to a request to reweigh the evidence, which we cannot do. *Anderson*, 12 BLR at 1-113.

Accordingly, the administrative law judge's Decision and Order on Remand – Awarding Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge